

LAVA CAP OU 01

"FULLY EXECUTED"

2006-27

AGREEMENT NUMBER

05-T2966

AMENDMENT NUMBER

REGISTRATION NUMBER

SFUND RECORDS CTR

2113745

This Agreement is entered into between the State Agency and the Contractor named below

STATE AGENCY'S NAME

Department of Toxic Substances Control

CONTRACTOR'S NAME

U.S. Environmental Protection Agency

The term of this

Agreement is:

May 22, 2006

through

June 30, 2010

The maximum amount

\$655,000.00

of this Agreement is:

Six Hundred Fifty-Five Thousand Dollars and No Cents (dollars rounded)

The parties agree to comply with the terms and conditions on the following exhibits which are by reference made a part of the Agreement:

Exhibit A - Scope of Work And Budget

9 Page(s)

Phase I - Primary Mine Area Remediation

16 Page(s)

* Exhibit C - General Terms and Conditions

GTC 306

Mar 06

(Number)

(Dated)

Exhibit D - Special Terms and Conditions

N/A Page(s)

Exhibit E - Additional Provisions

N/A Page(s)

View at <http://www.ols.dqs.ca.gov> - Standard Language

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR

CALIFORNIA
Department of General Services
Use Only

CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.)

U.S. Environmental Protection Agency

BY (Authorized Signature)

DATE SIGNED (Do not type)

See official signatures attached.

PRINTED NAME AND TITLE OF PERSON SIGNING

Keith Takata Director

ADDRESS Superfund Division

5 Hawthorne Street, SFD-1

San Francisco, CA 94105

STATE OF CALIFORNIA

AGENCY NAME

Department of Toxic Substances Control

BY (Authorized Signature)

DATE SIGNED (Do not type)

See official signatures attached.

PRINTED NAME AND TITLE OF PERSON SIGNING

Sandra Poindexter Chief, Contracts and Business Management Branch

ADDRESS

P.O. Box 806

Sacramento, CA 95812-0806



Exempt Per _____

LAVA CAP MINE SUPERFUND SITE
STATE SUPERFUND CONTRACT
PHASE I – PRIMARY MINE AREA (OU1) REMEDIATION

1. GENERAL AUTHORITY

This State Superfund Contract ("Contract") is entered into pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. §§ 9601 et seq., as amended, the National Oil and Hazardous Substances Pollution Contingency Plan, 55 Fed. Reg. 8666 et seq., 40 CFR Part 300 (hereinafter referred to as the "NCP"), and other applicable federal regulations, including 40 CFR Part 35, Subpart O, and 40 CFR Part 31 and California Health and Safety Code §§ 25300 et seq.

2. PURPOSE

Pursuant to Section 104(c) of CERCLA, 42 U.S.C. § 9604(c), the United States Environmental Protection Agency ("EPA") and the Department of Toxic Substances Control ("DTSC"), on behalf of the State of California (the "State"), do hereby enter into this Contract to document the responsibilities of EPA, as lead agency, and the State, as support agency, during the Phase I Primary Mine Area Remedial Action ("Remedial Action") at the Lava Cap Mine Superfund Site, EPA CERCLIS ID No. CAD983618893, (the "Site") including the basic purpose, scope, and administration of this Contract. The Remedial Action represents the primary mine area remediation portion of the remedial action selected in the Record of Decision dated September 28, 2004 ("ROD"), which is attached hereto as Appendix B. This work is further described in the Scope of Work ("SOW") attached hereto as Appendix A. The SOW includes the estimated cost to perform the Remedial Action. The Governor of California has designated DTSC to represent the State with respect to EPA-lead response actions, including the remedial action at the Site pursuant to 40 CFR § 300.180. The parties acknowledge and agree that this Contract is intended to obtain the required CERCLA assurances pursuant to Sections 104(c)(3), 104(c)(9), and 104(j) of CERCLA, 42 U.S.C. §§ 9604(c)(3), 9604(c)(9), and 9604(j), and to document State involvement in the remedial action cleanup process, pursuant to Section 121(f) of CERCLA, 42 U.S.C. §121(f), and 40 CFR § 300.515(g) of the NCP to the extent applicable. This Contract covers Remedial Action, as defined in this paragraph.

3. SITE DESCRIPTION

The Site is known as the Lava Cap Mine Superfund Site, and is located in Nevada City, California. The Site is described in detail in the ROD (see Appendix B).

4. DURATION OF THIS CONTRACT

This Contract shall become effective upon execution by EPA and the State, and approval by the California Department of General Services, and shall remain in effect until the parties determine that the Remedial Action as described in the SOW is complete or that the final reconciliation of the Remedial Action costs has been satisfied, whichever is later, but not later than June 30, 2010; notwithstanding the foregoing, operation and maintenance assurance required by Section 104(c)(3)(A) of CERCLA, as set forth in Paragraph 23 hereof, shall remain in effect for the expected life of such actions. EPA and the State may extend the duration of this Contract by amendment pursuant to Paragraph 31 below if additional time is needed to complete the Remedial Action, close out the Remedial Action, or reconcile costs.

If within 365 calendar days from the Effective Date of this Contract EPA has not awarded a construction contract for the work described in the SOW, the State may terminate this Contract by providing written notice of termination to EPA. In the event that the construction described in the SOW has not been completed within three (3) years following the date of this Contract, the State may terminate this Contract by providing written notice of termination to EPA not more than ninety (90) days following the three (3) year anniversary date of the Contract.

5. DESIGNATION OF PRIMARY CONTACTS AND THEIR RESPONSIBILITIES

A. EPA Remedial Project Manager

EPA's designated remedial project manager ("RPM") for this Contract is:

Dave Seter
75 Hawthorne Street, SFD-7-2
San Francisco, California 94105
Telephone: (415) 972-3250
Facsimile: (415) 947-3528

EPA may change its designated RPM by letter to the State signatories without amending this Contract. Such notice shall be deemed to incorporate such change into this Contract.

B. State Remedial Project Manager

The State's designated State Remedial Project Manager ("SRPM") for this Contract is:

Steven Ross
Hazardous Substances Engineer
8800 Cal Center Drive
Sacramento, California 95826
Telephone: (916) 255-3694
Facsimile: (916) 255-3696

The State may change its designated SRPM by letter to the EPA signatories without amending this Contract. Such notice shall be deemed to incorporate such change into this Contract.

C. RPM and SRPM Consultation on Cost Changes

The RPM, in consultation with the SRPM, may make changes to the work outlined in the SOW that do not substantially (i) alter the scope of the Remedial Action or (ii) increase the total cost of the Remedial Action without affecting the validity of this Contract. The RPM shall obtain approval from the SRPM for any change order submitted to EPA for the Site excepting change orders for \$100,000 or less which would not increase the total cost of the Remedial Action above the limit established in Section 16. The RPM may assume that the SRPM has approved a change order if the SRPM does not respond to a request for approval within 14 calendar days from receipt of notification by the RPM. Subject to Section 16.B of this Contract, any change to the work that substantially (a) alters the scope of the Remedial Action or (b) increases the total cost of the Remedial Action, shall require an amendment to this Contract.

6. NEGATION OF AGENCY RELATIONSHIP

Nothing contained in this Contract shall be construed to create an express or implied agency relationship between EPA and the State. EPA and its employees, agents, and contractors are not authorized to represent or act on behalf of the State in any matter relating to the subject matter of this Contract. The State and its employees, agents, and contractors, are not authorized to represent or act on behalf of EPA in any matter relating to this Contract.

7. SITE ACCESS

A. Site Access

EPA shall use its own authority to secure access to the Site and adjacent properties

necessary for EPA, its contractors, and the State to conduct the Remedial Action undertaken pursuant to the ROD, including operation and maintenance; access instruments may include, but are not limited to, leases, rights-of-way, and easements. The State may secure access under its own authority, and may request assistance from EPA as necessary. At EPA's request, the State shall obtain, or assist EPA in obtaining, any permits necessary to conduct the activities described in the ROD.

B. State Site Visits

Insofar as EPA has access to the Site, representatives of the State shall have access to the Site to the same extent as EPA for the purpose of reviewing work in progress, subject to the State's compliance with the Site's safety plan. To the extent feasible, representatives of the State shall coordinate with the RPM prior to visiting the Site.

C. EPA Liability Waiver

EPA shall not be responsible for any harm to any State representative or other person arising out of, or resulting from, any act or omission by the State in the course of an on-site visit.

D. State Liability Waiver

The State shall not be responsible for any harm to any EPA representative or other person arising out of, or resulting from, any act or omission by EPA in the course of an on-site visit.

8. THIRD PARTIES

A. Exclusion of Third Party Benefits

This Contract benefits the State and EPA only and extends no benefit or right to any third party not a signatory hereto.

B. Liability

EPA assumes no liability to third parties with respect to losses due to bodily injury or property damage that exceed the limitations set forth in 28 U.S.C. §§ 1346(b), 2671-2680. To the extent permitted by State law, the State assumes no liability to any third parties with respect to losses due to bodily injury or property damage.

9. PROJECT SCHEDULE

The anticipated date for issuing the work assignment under EPA's RAC Contract (No. 68-W-98-225) for Remedial Action work at the Site is March 2006, and the anticipated date for awarding the construction contract at the Site is April 2006. EPA agrees to notify the State of any change in such anticipated award date. EPA shall furnish to the State a copy of the project schedule prepared by the contractor upon receipt thereof. Any change in the project schedule shall not affect the validity of this Contract.

10. STATE REVIEW

A. State Funding; MSCA Funds

The State, at its own cost and expense, shall furnish the necessary personnel, materials, services, and facilities to perform its responsibilities under the terms of this Contract. In the event that the State is awarded separate funding for this Site under an EPA Management Assistance Multi-Site Cooperative Agreement ("MSCA"), the State may use such monies to furnish the necessary personnel, materials, services, and facilities to perform its responsibilities under the terms of this Contract; provided, however, that MSCA funded in-kind services may not be used to satisfy the State's cost share for the Site.

B. Submission of Comments

EPA, in consultation with the State, shall specify a binding time frame for the State to review and submit comments on matters relating to the implementation of the Remedial Action, subject to the time frames set forth in 40 CFR § 300.515(h)(3). The RPM shall furnish, or arrange to have furnished, to the SRPM in a reasonably timely manner the deliverables the RPM, in consultation with the SRPM, may determine to be appropriate for review and/or comment by the State. Failure by the State to review or submit comments on matters relating to the implementation of the Remedial Action within the time frames specified by EPA shall be deemed an election not to review and submit comments thereon. Failure to timely review and comment shall not delay the project schedule. The RPM shall maintain communications with the SRPM regarding receipt of comments and responses thereto.

11. RECORDS ACCESS

A. Site Information

At EPA's request, and to the extent allowed by state law, the State shall make available to EPA any information in its possession concerning the Site except privileged or confidential

information which is not protected from disclosure under federal law. At the State's request and to the extent allowed by federal law, EPA shall make available to the State any information in its possession concerning the Site except privileged or confidential information which is not protected from disclosure under state law. EPA and the State shall agree upon a schedule for the reasonable, prompt submission of information concerning the Site.

B. Financial Records

EPA shall arrange to have furnished directly to the State a copy of the monthly progress report supplied by the CH2M Hill project manager summarizing the activities performed in the previous month and a copy of the payment estimate for the corresponding period as long as the State remains an authorized representative to receive Confidential Business Information from EPA. Such monthly progress reports shall serve as documentation of the State's cost share pursuant to Section 16 of this Contract.

C. Confidentiality

EPA shall not disclose information submitted by the State under a claim of confidentiality unless EPA is required to do so by federal law and has given the State advance notice of its intent to release that information. Absent notice of such claim, EPA may make said information available to the public without further notice. The State shall not disclose information submitted by EPA under a claim of confidentiality unless the State is required to do so by state law and has given EPA advance notice of its intent to release that information. Absent notice of such claim, the State may make said information available to the public without further notice.

12. RECORDS RETENTION

EPA and the State shall maintain all of their respective financial and programmatic records, supporting documents, statistical records, and other records related to the Site for a minimum of ten years following the submission of the final reconciliation of Remedial Action costs. If any litigation, claim, negotiation, audit, cost recovery, or other action involving the records has been started before the expiration of the ten-year period, EPA and the State shall retain such records until completion of the action and resolution of all issues which arise from it, or until the end of the regular ten-year period, whichever is later. Microform copying must be performed in accordance with the technical regulations and records management procedures contained in 36 CFR Part 1230 and EPA Order 2160 (July 1984), respectively.

13. CERCLA REQUIREMENTS

EPA and the State intend to follow all applicable program requirements, including

CERCLA, the NCP, and EPA policy and guidance with respect to the Remedial Action.

14. OTHER SITE AGREEMENTS

This Site has been included in the MSCA, which remains in effect between EPA and the State, and which is renewed annually and runs from October 1 through September 30 of the following year.

There is one previous State Superfund Contract for the Site. The State Superfund Contract for Phase I – Mine Area Residences (OU4) Soil Remediation (Agreement No. 04-T2867) was approved by the State of California Department of General Services on July 8, 2005.

Other portions of the Selected Remedial Action, as outlined in the ROD, which fall outside the scope of the previous State Superfund Contract or this State Superfund Contract for Phase I – Primary Mine Area (OU1) Remediation, in order to be performed, would require subsequent amendment(s) to this Contract, or separate State Superfund Contract(s).

15. CERCLA ASSURANCE: COST SHARE

Sections 104(c)(3) and 104(d)(1) of CERCLA, 42 U.S.C. §§ 9604(C)(3) and 9604(d)(1), require that EPA determine whether the Site was publicly or privately operated at the time of the release, in order to determine the State's cost share. As the Site was privately operated, the State's cost share is ten percent (10%) of the Remedial Action costs.

16. COST-SHARE CONDITIONS

A. Calculated Cost

The calculated cost of the construction and one-year's operation and maintenance of the Remedial Action ("Construction Costs") excluding EPA's indirect and intramural costs is Six Million One Hundred Seventy Thousand Eight Hundred Dollars (\$6,170,800). This calculation is derived from the Remedial Design Final Submittal estimate dated February 2006 and includes contingencies for change orders and construction management services. Based on the foregoing, the State's cost share of Construction Costs is calculated to be Six Hundred Seventeen Thousand Eighty Dollars (\$617,080). Within six (6) months following the date on which EPA has provided written notice to the State that EPA has accepted the completed construction for the Remedial Action from the construction contractor pursuant to Paragraph 24.D, EPA shall submit to the State an updated calculation of the cost of the operation and maintenance of the Remedial Action.

B. Payment Terms

i. On or before February 28 of each year of this Contract, EPA shall submit to the State an invoice for the State's ten percent (10%) cost share for such portion of the work identified in the SOW as was completed during the applicable billing period.

The invoice shall be submitted in duplicate (original plus one copy) to the following, with a copy also to the SRPM identified in paragraph 5.B:

Chief of Contracts and Office Services
California Department of Toxic Substances Control
P.O. Box 806
Sacramento, California 95812-0806.

Each invoice shall be accompanied by a cost summary which indicates the name of the Site, the billing period, the general contractor that performed the work during such billing period, the identification number assigned to the general contractor, and the total costs incurred during the period for which EPA is billing the State ("Cost Summary"). EPA shall also provide, as available, invoices and supporting documentation which are furnished to EPA by the contracting agent and prime contractor performing the work described in the SOW ("Contractor Documentation"); provided, that the EPA RPM may furnish the Contractor Documentation to the State RPM during the course of the project and EPA shall be deemed to have satisfied its obligations under this Paragraph. The Cost Summary and Contractor Documentation hereinafter shall be referred to collectively as the "Cost Documentation." The State shall pay the amount requested by such invoice within sixty (60) days following actual receipt thereof, provided that if the State receives such invoice prior to February 28, the State shall pay the amount requested by such invoice on or before April 30. The State assures payment of its cost share obligation for actual Remedial Action costs at the Site, which shall be settled at reconciliation pursuant to Paragraph 32 below, and which shall not exceed Six Hundred Seventeen Thousand Eighty Dollars (\$617,080) for construction and the first year of operation and maintenance. The State acknowledges that such assurance may require the State to seek additional appropriations to cover the work outlined in the SOW; provided, however, that the State's cost share obligation may only be increased above the calculated cost set forth in Paragraph 16(a) by an amendment to this Contract. The State shall use its best efforts to obtain authorization of funds necessary to meet its assurance to pay its cost share obligation for actual costs of the Remedial Action at the Site in accordance with state law; notwithstanding the foregoing, nothing contained herein shall be interpreted as a commitment to appropriate, obligate or pay funds in contravention of state law.

ii. Costs incurred by the State to off-set cost-share requirements shall be verified and

documented pursuant to the MSCA identified in Paragraph 14 of this Contract. Except as otherwise provided in the MSCA, no in-kind services shall apply to the State's cost-share. Payment terms may be adjusted only by amendment to this Contract, pursuant to paragraph 31 below. Any in-kind match shall comply with Section 104(c)(5) of CERCLA, 40 CFR § 31.24, and 40 CFR § 35.6284.

iii. All State payments shall be made payable to EPA and sent to the Regional Financial Management Office specified below (payments should be identified by referencing the Lava Cap Mine Superfund Site, EPA Cerclis ID No. CAD983618893):

United States Environmental Protection Agency
Region 9 Superfund
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251

C. State Credit

CERCLA credit may be applied to offset the State's cost-share requirements in this Contract. Credits are limited to site-specific expenses that EPA determines to be reasonable, documented, direct, extramural, out-of-pocket expenditures of non-federal funds that have not been previously applied or reimbursed. The State does not declare credit for costs incurred at the Site at this time.

17. EMERGENCY RESPONSE ACTIVITIES

Nothing in this Contract shall be construed to restrict, impair, or otherwise affect the authority of EPA or the State to carry out emergency response activities, including removals. Notwithstanding the foregoing, any emergency response activities at the Site shall not increase the State's financial obligations under this Contract.

18. CERCLA ASSURANCE: 20-YEAR WASTE CAPACITY ASSURANCE

The State has submitted its Waste Capacity Assurance Plan to EPA. EPA's 1995 National Assessment of hazardous waste treatment and disposal capacity shows that there is adequate national capacity through the year 2013, pursuant to 40 CFR § 35.6105(b)(3), 50 CFR § 35.6120, and 40 CFR § 300.510(e)(1). Subsequent EPA analysis shows that this capacity exists through the year 2025. Pursuant to Section 104(c)(9) of CERCLA, 42 U.S.C. § 9604(c)(9), the State hereby assures the availability of hazardous waste treatment or disposal facilities for 20 years following the execution of this Contract.

19. CERCLA ASSURANCE: OFF-SITE STORAGE, TREATMENT, OR DISPOSAL

Pursuant to Sections 104(c)(3)(B) and 121(d)(3) of CERCLA, EPA and the State have determined that off-site disposal of hazardous substances is required for an estimated seventy (70) cubic yards of mine process waste as part of this Remedial Action.

20. NOTIFICATION OF TRANSFERS OF HAZARDOUS WASTE

EPA or the State must provide written notification prior to the off-site shipment of hazardous waste from the Site to an out-of-state waste management facility to: (i) the appropriate state environmental official for the state in which the waste management facility is located and/or (ii) the appropriate Indian Tribal official who has jurisdictional authority in the area where the waste management facility is located.

21. CERCLA ASSURANCE: REAL PROPERTY ACQUISITION

EPA and the State have not yet determined whether or not the implementation of the ROD requires the acquisition of an interest in real property. In the event that EPA and the State determine that the implementation of the Remedial Action requires acquisition of an interest in real property, EPA will use its authority under Section 104(j)(1) of CERCLA to acquire such property interest. In the event that EPA acquires any such property interest to implement the Remedial Action, the State shall accept from EPA the transfer of such property interest pursuant to Section 104(j)(2) of CERCLA. In the event that the State transfers any such real property interest to a third party, the State shall ensure that such real property remains subject to all institutional controls. EPA and the State shall determine the institutional controls necessary to implement the Remedial Action within six months following completion of construction of the Remedial Action.

22. REMEDY SHAKEDOWN

A. Operational and Functional

The State has not elected to take the lead upon completion of construction pursuant to a state cooperative agreement. Pursuant to 40 CFR § 300.435(f), EPA shall conduct activities necessary to ensure that the Remedial Action is operational and functional for a period up to one year after construction is complete, or until EPA and the State determine that the Remedial Action is functioning properly and performing as designed, whichever is earlier. For this purpose, construction will be considered complete after the completion of the final inspection, as described in paragraph 24.B. below. EPA and the State may extend the one-year time period by amending this Contract pursuant to paragraph 32 below. The State shall be responsible for its ten

percent (10%) cost-share during such time.

B. Remedial Action

Pursuant to 40 CFR 300.435(f) of the NCP, EPA is authorized to cost share in the Remedial Action until the Remedial Action has achieved the remedial objectives and remediation goals in the ROD, and is determined to be operational and functional.

23. CERCLA ASSURANCE: OPERATION AND MAINTENANCE

The State hereby assures that the operation and maintenance ("O&M") provided under this Contract for the implemented Remedial Action will remain in effect for the expected life of such Remedial Action pursuant to Section 104(c)(3)(A) of CERCLA, commencing once the Remedial Action is determined to be operational and functional pursuant to paragraph 22.A. In addition, the State assures that institutional controls will be monitored and retained as part of the State's O&M obligations. The State shall use best efforts to secure and maintain authorization of funds necessary to undertake its O&M obligations hereunder; notwithstanding the foregoing, nothing contained herein shall be interpreted as a commitment to appropriate, obligate, or pay funds in contravention of state law.

24. JOINT INSPECTION OF THE REMEDY

A. Prefinal Inspection

The RPM, in consultation with the SRPM, shall conduct a prefinal inspection upon completion of the construction work to determine whether there are outstanding items which remain to be completed or corrected. The RPM shall provide such notice to the SRPM as shall reasonably afford the SRPM an opportunity to accompany the RPM on such inspection. The RPM shall prepare a prefinal inspection report summarizing any such outstanding items and shall furnish a copy of such report to the SRPM.

B. Final Inspection

The RPM, in consultation with the SRPM, shall conduct a final inspection upon completion of any outstanding construction items for the Remedial Action at the Site. The RPM shall provide such notice to the SRPM as shall reasonably afford the SRPM an opportunity to accompany the RPM on such inspection. The final inspection will consist of a walk-through inspection of the project site, and will focus on the outstanding construction items identified in the prefinal inspection. If the RPM determines that any items remain outstanding or uncorrected, the inspection shall be considered a prefinal inspection and the RPM shall prepare another

prefinal inspection report.

C. Close-Out Report

Upon satisfactory completion of the final inspection, EPA will provide to the State a copy of the close-out report for the Remedial Action.

D. Acceptance of the Work

EPA, in consultation with the State, shall determine that the activities described in the SOW have been completed. The EPA Regional Administrator, or his delegatee, shall provide written notice to the State that EPA has accepted the completed project from the construction contractor.

E. Acceptance of the Remedy

EPA and the State shall review the Remedial Action report. The RPM shall coordinate with the SRPM to obtain the State's concurrence that the remedy is complete and performing adequately. Enforcement actions and other necessary activities may proceed independent of completion of construction and reconciliation of costs; NPL deletion may proceed independent of reconciliation of costs.

25. NPL DELETION

EPA shall consult and provide the State with the criteria used to determine the effectiveness of the remedy as well as the rationale for determining completion of the remedy, and for delisting the Site from the NPL.

26. RESPONSIBLE PARTY ACTIVITIES

If at any time during the period of this Contract a responsible party comes forward to perform any work covered by this Contract, EPA and the State shall amend or terminate this Contract.

27. ENFORCEMENT

Nothing contained in this Contract shall waive, or be deemed to waive, EPA's right to bring an action against any person or persons for liability under Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, or any other statutory provision or common law. Nothing contained in this Contract shall waive, or be deemed to waive, the State's right to bring an action against

any person or persons for liability under the California Health and Safety Code, or any other statutory provision or common law.

28. LITIGATION AND COST RECOVERY

EPA and the State may be entitled to assert claims against a third party (herein referred to as a "potentially responsible party" or "PRP") for reimbursement of any services, materials, monies, or other items of value expended by EPA or the State for Fund-financed response activities.

29. ISSUE RESOLUTION

Any disagreements arising under this Contract shall be resolved to the extent possible by the RPM and the SRPM. The RPM and the SRPM, in consultation with their respective supervisors, shall use their best efforts to resolve disagreements informally.

30. SANCTIONS FOR FAILURE TO COMPLY

If either party fails to comply with the terms of this Contract, and if the parties have been unable to resolve the matter informally among themselves, then either party may proceed as set forth in 40 CFR § 35.6805(o), which is incorporated herein by reference as if fully stated herein.

31. AMENDMENT

EPA and the State may amend this Contract, in writing, for reasons which include, but are not limited to, cost revisions or modifications of the Remedial Action.

32. RECONCILIATION PROVISION

A. Within two years following the completion of construction of the Remedial Action as required by the ROD and described in the SOW, EPA and the State shall reconcile all Construction Costs described in Paragraph 16. At the time that Construction Costs are reconciled, the State may request EPA to furnish to the State documents supporting costs incurred by EPA. The reconciliation of Construction Costs shall not affect the duration of this Contract.

B. Subject to Paragraph 4 hereof, this Contract shall remain in effect until the financial settlement of Construction Costs and final reconciliation of Construction Costs (including change orders, claims, overpayments, reimbursements, etc.) have been completed. Pursuant to 40 CFR § 35.6805(k), completion of final reconciliation shall mean that EPA and the State have satisfied

their cost-share requirements specified in paragraphs 15 and 16 above. EPA will not use overpayments by the State to satisfy obligations at another site. In the event that the payment terms above do not cover the cost of the Remedial Action, EPA will bill the State for the State cost share. Final reconciliation of Remedial Action costs by EPA shall follow acceptance of the remedy by both EPA and the State and is not contingent upon deletion of the Site from the NPL. At the time of such reconciliation, the State may request EPA to furnish to the State documents supporting costs incurred by EPA. Contractual resolutions and final audit determinations that impact the Fund-financed Remedial Action may require an amendment to this Contract pursuant to Paragraph 31.

33. CONCLUSION OF THE CONTRACT

Subject to Paragraph 4 hereof, this Contract shall conclude when all of the following requirements have been met: (i) response activities for the Remedial Action at the Site have been satisfactorily completed and payments have been made as specified under paragraphs 15 and 16 which address cost share; (ii) the Financial Management Officer has a final accounting of all project costs, including change orders and contractor claims, pursuant to paragraph 32 above; and (iii) the State has submitted all of its cost share payments to EPA, has undertaken responsibility for O&M, and if applicable, has accepted all interest in real property pursuant to 40 CFR § 35.6805(I)(4).

34. SEVERABILITY

If any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Contract and such invalidity, illegality, or unenforceability shall not affect any other provision of this Contract, and this Contract shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein.

35. DRUG FREE WORKPLACE

EPA acknowledges that it is subject to the Drug Free Workplace Act of 1988, as implemented by 40 CFR §§ 23.500-23.506.

36. AUTHORITY


Each undersigned representative of the parties certifies that he or she is fully authorized to enter into the terms and conditions of this Contract and to legally bind such party to this Contract.

37. EFFECTIVE DATE

The Effective Date of this Contract shall be the later of the date on which EPA or the State signs this Contract.

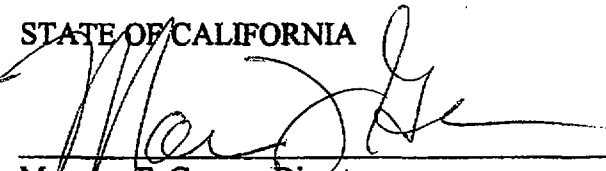
In witness whereof, the parties hereto have executed this Contract in five (5) copies, each of which shall be deemed an original.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

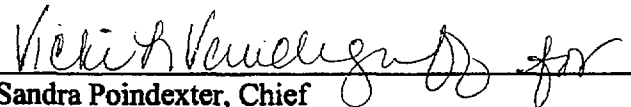


Keith Takata, Director
Superfund Division
U.S. Environmental Protection Agency, Region IX

STATE OF CALIFORNIA



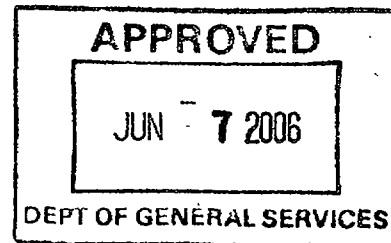
Maureen F. Gorsen, Director
Department of Toxic Substances Control
California Environmental Protection Agency

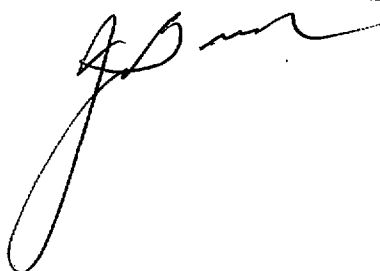


Sandra Poindexter, Chief
Contracts and Business Management Services
Department of Toxic Substances Control
California Environmental Protection Agency

Department of General
Services Use Only

DP2





LAVA CAP MINE SUPERFUND SITE
Nevada City, California
Phase I – Primary Mine Area (OU1) Remediation
STATEMENT OF WORK
FOR
STATE SUPERFUND CONTRACT

1.0 INTRODUCTION

This statement of work ("SOW") describes activities to be accomplished for the Primary Mine Area Remediation at the Lava Cap Mine Superfund Site ("Site") on behalf of the United States Environmental Protection Agency, Region IX ("EPA"), under this State Superfund Contract ("Contract"). The activities are derived from the Mine Area Operable Unit (OU1) Record of Decision ("ROD") dated September 28, 2004.

2.0 BACKGROUND

2.1 Site Location and Description

Lava Cap Mine
Lava Cap Mine Road
Nevada City, California
EPA ID # CAD983618893

The Site is located in the Sierra Nevada foothills approximately 6 miles east of Grass Valley, Nevada County, California. The geographical coordinates are latitude 39°13'41.0" north and longitude 120°58'11.5" west, Township 16 North, Range 9 East, Section 28 of the Mount Diablo baseline and meridian.

The above-referenced ROD addresses the Mine Area Operable Unit portion of the Site where hardrock mining operations took place, plus several contiguous land parcels. The work to be performed under this Contract represents the Primary Mine Area Remediation portion of the remedy selected in the ROD. Additional portions of the Site may be addressed in future Records of Decision.

The mine is no longer operational but was once an active gold and silver mine. The surface elevation of the central shaft is approximately 2,840 feet above sea level. At the mine, ore was hauled to the surface, crushed, and processed to concentrate the fractions of gold and silver present. The finished product was sent offsite for further refining to

smelters located near Tacoma, Washington and San Francisco, California. The operators of the mine deposited waste tailings into the Little Clipper Creek drainage which runs through the mine property. This disposal practice resulted in the migration of a significant quantity of tailings away from the mine to downstream areas.

Portions of the Mine Area Operable Unit to be cleaned up under the Phase I Primary Mine Area Remediation (which is the subject of this State Superfund Contract) include: large tailings and waste rock piles covering an area of approximately 4 acres; several abandoned mine buildings; and mine tailings deposited in the Little Clipper Creek surface water drainage immediately downstream of the mine.

Previously, the State Superfund Contract for Phase I – Mine Area Residences (OU4) Soil Remediation, addressed contaminated soil immediately adjacent to one occupied residence located on parcel 39-160-16 and adjacent roadways.

2.2 Site Contamination/Mine Area Remediation

The native ore, in addition to gold and silver, contained naturally occurring arsenic and trace amounts of heavy metals such as lead. Following the processing of the ore, the arsenic and heavy metals remained in the finely ground tailings.

To determine the nature and extent of contamination at the Site, EPA conducted three main rounds of data gathering in October/November 1999, January 2000, and May/June 2000. Media sampled at the Site included groundwater, surface water, soil, and sediment. These media were sampled at both suspected source areas and also at "reference" or "background" locations unaffected by historical Site activities.

As part of the Remedial Design Process for this Phase I Primary Mine Area Remedial Action, in February, March, and May 2005, EPA collected additional soil contamination data from areas surrounding the lower residence located on parcel 39-160-30.

It is EPA's assessment that the response actions necessary for parcel 39-160-30 under this SOW will be the demolition of the existing house known as the lower residence, placement of a soil/vegetative cap over the level portion of the parcel, placement of a rock cover over the steeper portions of the parcel, and implementation of institutional controls prohibiting residential use of the parcel.

It is EPA's assessment that the response actions necessary for parcel 39-160-25 under this SOW will be the demolition of the existing house known as the upper residence, decontamination of mine buildings, placement of a multi-layer cap over the tailings pile, re-grading waste rock piles and placing a vegetative cover over the regraded areas, installation of a collection structure at the mine adit, installation of channels to route Little Clipper Creek and several side drainages around the waste rock and tailings piles,

fencing-off the mine buildings, and implementation of institutional controls prohibiting residential use of the parcel.

It is EPA's assessment that the response actions necessary for parcel 39-160-28 under this SOW will be the replacement of the failed log dam with a rock buttress, installation of a collection structure, and excavation of tailings surrounding the failed log dam and the restaging of this material with the main tailings pile.

It is EPA's assessment that the response actions necessary for parcels 39-170-66 and 39-170-77, which are parcels in existing residential use located to the south of the mine, under this SOW will be the excavation of tailings which accumulated in Little Clipper Creek following the failure of the log dam, and restaging this material with the main tailings pile, and post-excavation restoration of the stream channel.

Since sampling has demonstrated that other metals of concern are co-located with arsenic in the tailings, use of arsenic levels to determine the extent of excavation will result in mitigation of the risks from all metals. Confirmation sampling will include the full suite of metals of concern.

Should there be areas on the Site where cleanup to background levels is not practicable, land use restrictions will be required to ensure overall long-term protectiveness of the cleanup.

2.3 Site-Work Previously Performed

In October 1997, following the partial collapse of the log dam onsite, the EPA Region 9 Superfund Emergency Response Section determined that the high arsenic concentrations and the mobility of the extremely fine-grained tailings warranted a time-critical removal action under Superfund authority. During October and November 1997, EPA removed 4,000 cubic yards (cy) of tailings from just upstream of the damaged log dam and stockpiled this material in a more stable location closer to the mine buildings. In 1998, EPA stabilized another smaller tailings release and further improved drainage.

EPA listed the Lava Cap Mine Superfund Site on the Superfund National Priorities List (NPL) in February 1999.

From April 2003 through February 2004, EPA conducted another removal action to reduce risks from contaminated soil to individuals living on the mine property and to others whose individual water supply wells demonstrated elevated levels of arsenic. This removal action resulted in vacating two residences, which remain vacant to this date, both of which are scheduled to be demolished as part of a future phase of cleanup not covered by this SOW.

In September 2005, EPA's contractor mobilized and began performing the OU4 Remedial Action which addresses contaminated soil immediately adjacent to one occupied residence located on parcel 39-160-16 and adjacent roadways. The work was completed in November 2005. EPA and the California Department of Toxic Substances Control (DTSC) conducted a final inspection of the work on March 2, 2006.

3.0 WORK TO BE PERFORMED

This Contract is for remedial actions related to the Phase I Primary Mine Area Remediation. The following is an outline of the tasks that will take place during this phase of the remedial action

Tasks to be performed:

Baseline Activities:

- 1) Mobilization. The necessary equipment and personnel will be brought on site to begin the work.
- 2) Engineer's Field Office. A field office shall be established for the purpose of coordinating and overseeing construction.
- 3) Surveying. The necessary control points shall be established and key features of the project shall be located and marked as necessary.
- 4) Clear and Grub. In areas where demolition and earth moving will be required, any excess vegetation shall be cleared away.
- 5) Relocate Trailers, Vehicles, Objectionable Materials. In areas where demolition and earth moving will be required, there are several abandoned vehicles and other types of debris which shall be moved.
- 6) Remove and Dispose Tank and Vat Remnants. The process buildings contain tanks and vats which shall be removed and disposed of appropriately.
- 7) Demolish Building. The "upper rental" shall be demolished to allow for capping of the contaminated areas beneath and adjacent to the building.
- 8) Excavate, Haul and Place in Cell. Deposits of mine tailings which have migrated from the main disposal area or tailings pile shall be excavated from several locations around the mine buildings and at the location of the failed log dam, and will be re-staged in the main tailings disposal area.
- 9) Excavate, Haul to Permitted Disposal. Certain materials excavated shall be disposed of off-site should they exceed EPA's hazardous waste criteria.
- 10) Excavate Rockfill, Screen, Haul and Place in Buttress. Since it has been determined that the waste rock on-site can be safely utilized as material for the rock buttress, it shall be used for that purpose.

- 11) Channel Excavation, Haul and Place in Cell. Deposits of mine tailings which have migrated from the main disposal area or tailings pile shall be excavated from several locations along Little Clipper Creek downstream of the failed log dam, and shall be re-staged in the main tailings disposal area.
- 12) Salvage and Place Class 400 Rip Rap. Certain rip rap materials placed during previous response actions shall be salvaged and re-used.
- 13) Import Backfill. Clean shall be placed as the base layer for vegetative cover at locations of the tailings pile cap and the lower residence cap, and waste rock areas.
- 14) Rock Mulch. At certain areas of the site, the steeper slopes shall be capped with a rock mulch for the purposes of erosion control.
- 15) Hydroseeding. In order to quickly establish vegetation on areas which included soil cover as a component of the cleanup, hydroseeding shall be used.
- 16) Class 400 Rip Rap Bedding Material; 17) Class 400 Rip Rap; 18) Class 150 Rip Rap; 19) Class 2T Rip Rap; 20) Class 300 Rip Rap. Several drainage channels are to be constructed using various sizes of rip rap and associated bedding materials.
- 21) 60 ml HDPE; 22) 80 ml HDPE. The tailings cap and drainage channel shall incorporate HDPE liners of two different thicknesses to prevent subsurface infiltration of water.
- 23) Nonwoven Geotextile. Nonwoven geotextile shall be used as an intermediate layer between the waste rock and soil cover in areas where the waste rock is to be revegetated.
- 24) Pipe Removal. Existing surface water diversion channels which are being re-sized and/or upgraded as part of the cleanup shall be removed.
- 25) 6-inch HDPE Perforated Pipe; 26) 12-inch HDPE pipe; 27) Filter Sand for Chimney Drain. HDPE pipe and a sand-filled chimney drain shall be used for the purpose of collecting and conveying any drainage generated within the tailings pile.
- 28) 6' Tall Chain Link Fence; 29) 12' Wide Gate for Chain Link Fence. Portions of the site shall be fenced and gated to protect the remedy and minimize any potential physical hazards associated with existing structures which are to remain standing after the cleanup.
- 30) 8' Tall Deer Fence; 31) 12' Wide Gate for Deer Fence; 32) Temporary Deer Fence. Among the areas to be excavated along Little Clipper Creek are privately owned landscaped areas which are protected by an existing deer fence which will have to be removed as part of the cleanup and replaced.
- 33) Cyanide Building Remediation; 34) Mill Building Remediation; 35) Assay Building Remediation. Several buildings associated with the mine contain deposits of contamination which shall be removed and handled appropriately.
- 36) 4-strand Barbed Wire Fence. Barbed wire fence will be required in some areas for security purposes.
- 37) Culvert w/FES. Culverts shall be installed beneath roadways where conveyance of surface water flow is necessary.

38) Adjust Monitoring Wells; 39) Abandon Monitoring Wells. Existing monitoring wells in the tailings pile will need to be abandoned or adjusted due to construction of the tailings pile cap.

40) Buttress Spillway. It will be necessary to construct a spillway over the buttress to convey the Little Clipper Creek drainage safely across the buttress without raising erosion concerns.

41) Miscellaneous concrete structures. Installation of vaults and other concrete structures will be necessary at select locations.

Option A (Mine Storage Building Area) Activities:

1) Mobilization. The necessary equipment and personnel will be brought on site to begin the work.

2) Clear and Grub. In areas where demolition and earth moving will be required, any excess vegetation shall be cleared away.

3) Relocate Trailers, Vehicles, Objectionable Materials. In areas where demolition and earth moving will be required, there are several abandoned vehicles and other types of debris which shall be moved.

4) Import Backfill. Clean shall be placed as the base layer for vegetative cover at locations of the tailings pile cap and the lower residence cap, and waste rock areas.

5) Rock Mulch. At certain areas of the site, the steeper slopes shall be capped with a rock mulch for the purposes of erosion control.

6) Hydroseeding. In order to quickly establish vegetation on areas which included soil cover as a component of the cleanup, hydroseeding shall be used.

Option B ("Lower Rental" Area) Activities:

1) Mobilization. The necessary equipment and personnel will be brought on site to begin the work.

2) Clear and Grub. In areas where demolition and earth moving will be required, any excess vegetation shall be cleared away.

3) Relocate Trailers, Vehicles, Objectionable Materials. In areas where demolition and earth moving will be required, there are several abandoned vehicles and other types of debris which shall be moved.

4) Demolish Building. The "lower rental" shall be demolished to allow for capping of the contaminated areas beneath and adjacent to the building.

5) Channel Excavation. Drainage channels shall be installed at the "lower rental" location to facilitate surface runoff around the capped areas.

6) Import Backfill. Clean shall be placed as the base layer for vegetative cover at the locations the "lower rental".

7) Rock Mulch. In the "lower rental area", the steeper slopes shall be capped with a rock mulch for the purposes of erosion control.

- 8) Hydroseeding. In order to quickly establish vegetation on areas which included soil cover as a component of the cleanup, hydroseeding shall be used.
- 9) Class 150 Rip Rap. Drainage channels are to be constructed using various sizes of rip rap and associated bedding materials.

Option C (Access Roads) Activities:

- 1) Mobilization. The necessary equipment and personnel will be brought on site to begin the work.
- 2) Aggregate base. A base layer shall be placed on existing roadways to support construction equipment and reduce long term dust generation, and increase the long term durability of the roadways for O&M activities.
- 3) Asphalt Concrete. A top layer shall be placed on existing roadways to reduce long term dust generation, and increase the long term durability of the roadways for O&M activities.

Operations and Maintenance (O&M) Activities

- 1) Monthly Inspections and Monitoring. The completed construction work will be inspected at a minimum frequency of once monthly and monitoring of surface water and groundwater will continue to determine the effect of the construction on arsenic levels in those media.
- 2) Miscellaneous Erosion/Channel Maintenance. Since the channels being constructed are open channels they will need to be periodically cleaned of any debris such as tree limbs that fall into the channels and may potentially obstruct flow. Although major post-construction erosion issues are not anticipated, it is possible that some follow-up erosion maintenance will be necessary.
- 3) Oversight of Maintenance Activities. To the extent that O&M work may necessitate the hiring of a construction subcontractor, EPA's prime contractor will supervise that work.

4.0 COST ESTIMATE

BASLINE ACTIVITIES	
(1) Mobilization	\$215,000
(2) Engineer's Field Office	\$22,000
(3) Surveying	\$18,400
(4) Clear and Grub	\$136,000
(5) Relocate Trailers, Vehicles, Objectionable Materials	\$8,300
(6) Remove Tank & Vat Remnants and Dispose	\$14,800
(7) Demolish Building	\$5,400
(8) Excavate, Haul & Place in Cell	\$507,600

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(9) Excavate, Haul to Permitted Disposal	\$12,400
(10) Excavate Rockfill, Screen, Haul & Place in Buttress	\$345,100
(11) Channel Excavation, Haul & Place in Cell	\$343,900
(12) Salvage and Place Class 400 Rip Rap	\$6,600
(13) Import Backfill	\$947,800
(14) Rock Mulch	\$19,700
(15) Hydroseeding	\$79,900
(16) Class 400 Rip Rap Bedding Mat'l	\$84,800
(17) Class 400 Rip Rap	\$595,600
(18) Class 150 Rip Rap	\$74,800
(19) Class 2T Rip Rap	\$20,200
(20) Class 300 Rip Rap	\$12,000
(21) 60 mil HDPE (Textured)	\$240,200
(22) 80 mil HDPE (Textured)	\$99,300
(23) Nonwoven Geotextile	\$294,900
(24) Pipe Removal	\$30,700
(25) 6 inch HDPE Perf. Drain Pipe	\$2,600
(26) 12 inch HDPE Pipe	\$14,100
(27) Filter Sand for Chimney Drain	\$68,500
(28) 6' Chain Link Fence	\$43,000
(29) 12' Wide Gate for Chain Link Fence	\$1,500
(30) 8' Deer Fence	\$8,800
(31) 18' Wide Gate for Deer Fence	\$2,200
(32) Temp. Deer Fence	\$2,000
(33) Cyanide Bldg. Remediation	\$110,000
(34) Mill Bldg. Remediation	\$30,300
(35) Assay Bldg. Remediation	\$2,800
(36) 4-Strand Barbed Wire Fence	\$1,900
(37) Culvert w/FES	\$7,600
(38) Adjust Mon. Wells	\$9,100
(39) Abandon Mon. Wells	\$4,000
(40) Buttress Spillway	\$61,800
(41) Misc. Concrete Structures	\$45,700
(42) Project and Construction Mgt., Engineering	\$682,700
BASELINE ACTIVITIES SUBTOTAL	
\$5,234,000	
OPTIONAL ACTIVITIES	
(1) Mobilization	\$11,300
(2) Clear and Grub	\$5,900

(3) Relocate Trailers, Vehicles, Objectionable Materials	\$12,100
(4) Import Backfill	\$165,400
(5) Rock Mulch	\$35,500
(6) Hydroseeding	\$8,400
(7) Project and Construction Mgt., Engineering	\$35,800
OPTION A ACTIVITIES SUBTOTAL	\$274,400
OPTION B ACTIVITIES	
(1) Mobilization	\$20,500
(2) Clear and Grub	\$12,000
(3) Relocate Misc. Objectionable Materials	\$1,600
(4) Demolish Buildings	\$13,400
(5) Channel Excavation	\$10,400
(6) Import Backfill	\$150,300
(7) Rock Mulch	\$202,000
(8) Hydroseeding	\$7,800
(9) Class 150 Rip Rap	\$13,000
(10) Project and Construction Mgt., Engineering	\$64,700
OPTION B ACTIVITIES SUBTOTAL	\$495,700
OPTION C ACTIVITIES	
(1) Mobilization	\$4,200
(2) Aggregate Base	\$36,500
(3) Asphalt Concrete	\$48,700
(4) Project and Construction Mgt., Engineering	\$13,400
OPTION C ACTIVITIES SUBTOTAL	\$102,800
O&M ACTIVITIES	
(1) Monthly Inspections and Monitoring	\$30,000
(2) Misc. Erosion/Channel Maintenance	\$20,000
(3) Oversight of Maintenance	\$8,000
(4) Project Mgt. And Engineering	\$5,800
O&M ACTIVITIES SUBTOTAL	\$63,800
GRAND TOTAL	\$6,170,800